

AMENDED IN SENATE MAY 8, 2013

SENATE BILL

No. 211

Introduced by Senator Price

February 11, 2013

An act to amend Sections 19551, 19551.1, and 19551.5 of, ~~and to amend and repeal Section 19551 of,~~ the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 211, as amended, Price. Tax administration: disclosure of information: Franchise Tax Board and cities.

Existing law authorizes, until December 31, 2013, a city that has entered into a reciprocal agreement, as defined, with the Franchise Tax Board, to exchange tax information, as provided. Existing law limits the use of the tax data received from the Franchise Tax Board for business tax administration purposes and provides that any other use or disclosure of the information is punishable as a misdemeanor.

This bill would ~~delete~~ *extend the authorization until January 1, 2019, and extend* the repeal date of the provisions relating to the reciprocal agreements between the Franchise Tax Board and cities, ~~thus indefinitely extending the duration for these provisions.~~ *This bill would add an additional limitation on the use of the tax data to require the data to be utilized in a form and manner to safeguard the tax information, as prescribed.*

Because this bill would continue the operation of the reciprocal agreement ~~tax information agreement~~ *exchange*, and the unauthorized use of such information would be a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19551 of the Revenue and Taxation Code,
2 as amended by Section 1 of Chapter 345 of the Statutes of 2008,
3 is amended to read:

4 19551. (a) The Franchise Tax Board may permit the
5 Commissioner of Internal Revenue of the United States, other tax
6 officials of this state, the Multistate Tax Commission, the proper
7 officer of any state imposing an income tax or a tax measured by
8 income or the authorized representative of that officer, or the tax
9 officials of Mexico, if a reciprocal agreement exists, to inspect the
10 income tax returns of any taxpayer, or may furnish to the
11 commission, or the officer or the authorized representative thereof
12 an abstract of the return or supply thereto information concerning
13 any item of income contained in any return or disclosed by the
14 report of any investigation of the income or return. The information
15 shall be furnished to the Multistate Tax Commission, the federal
16 or state officer or his or her representative, or the officials of
17 Mexico for tax purposes only. Except when furnished pursuant to
18 a written agreement, information furnished pursuant to this section
19 shall be furnished only if the request is in the form of an affidavit
20 under penalty of perjury stating that the purpose for the request
21 relates to an investigation of the tax specified in the request and
22 that the information will be used in the ordinary performance of
23 the applicant's official duties.

24 (b) Notwithstanding subdivision (a) and except as otherwise
25 provided in Section 19551.1, tax officials of political subdivisions
26 of this state shall request information from the Franchise Tax Board
27 by affidavit only. At the time a tax official makes the request, he
28 or she shall provide the affected person with a copy of the affidavit
29 and, upon request, make the information obtained available to that
30 person.

1 (c) For purposes of this section, “reciprocal agreement” means
2 a formal agreement to exchange information between national
3 taxing officials of Mexico and taxing authorities of the State Board
4 of Equalization, the Franchise Tax Board, and the Employment
5 Development Department. Furthermore, the reciprocal agreement
6 shall be limited to the exchange of information that is essential for
7 tax administration purposes only. Taxing authorities of the State
8 of California shall be granted tax information only on California
9 residents. Taxing authorities of Mexico shall be granted tax
10 information only on Mexican nationals.

11 (d) *This section shall remain in effect only until January 1, 2019,*
12 *and as of that date, is repealed.*

13 ~~SEC. 2. Section 19551 of the Revenue and Taxation Code, as~~
14 ~~added by Section 2 of Chapter 345 of the Statutes of 2008, is~~
15 ~~repealed.~~

16 *SEC. 2. Section 19551 of the Revenue and Taxation Code, as*
17 *added by Section 2 of Chapter 345 of the Statutes of 2008, is*
18 *amended to read:*

19 19551. (a) The Franchise Tax Board may permit the
20 Commissioner of Internal Revenue of the United States, other tax
21 officials of this state, the Multistate Tax Commission, the proper
22 officer of any state imposing an income tax or a tax measured by
23 income or the authorized representative of that officer, or the tax
24 officials of Mexico, if a reciprocal agreement exists, to inspect the
25 income tax returns of any taxpayer, or may furnish to the
26 commission, or the officer or the authorized representative thereof
27 an abstract of the return or supply thereto information concerning
28 any item of income contained in any return or disclosed by the
29 report of any investigation of the income or return. The information
30 shall be furnished to the Multistate Tax Commission, the federal
31 or state officer or his or her representative, or the officials of
32 Mexico for tax purposes only. Except when furnished pursuant to
33 a written agreement, information furnished pursuant to this section
34 shall be furnished only if the request is in the form of an affidavit
35 under penalty of perjury stating that the purpose for the request
36 relates to an investigation of the tax specified in the request and
37 that the information will be used in the ordinary performance of
38 the applicant’s official duties.

39 (b) Notwithstanding subdivision (a), tax officials of political
40 subdivisions of this state shall request information from the

1 Franchise Tax Board by affidavit only. At the time a tax official
2 makes the request, he or she shall provide the affected person with
3 a copy of the affidavit and, upon request, make the information
4 obtained available to that person.

5 (c) For purposes of this section, “reciprocal agreement” means
6 a formal agreement to exchange information between national
7 taxing officials of Mexico and taxing authorities of the State Board
8 of Equalization, the Franchise Tax Board, and the Employment
9 Development Department. Furthermore, the reciprocal agreement
10 shall be limited to the exchange of information that is essential for
11 tax administration purposes only. Taxing authorities of the State
12 of California shall be granted tax information only on California
13 residents. Taxing authorities of Mexico shall be granted tax
14 information only on Mexican nationals.

15 (d) This section shall become operative on January 1, ~~2014~~
16 *2019*.

17 SEC. 3. Section 19551.1 of the Revenue and Taxation Code
18 is amended to read:

19 19551.1. (a) (1) The Franchise Tax Board may permit the tax
20 officials of any city to enter into a reciprocal agreement with the
21 Franchise Tax Board to obtain tax information from the Franchise
22 Tax Board, as specified in subdivision (b).

23 (2) For purposes of this section, “reciprocal agreement” means
24 a formal agreement to exchange information for tax administration
25 purposes between tax officials of a city and the Franchise Tax
26 Board.

27 (b) The information furnished to tax officials of a city under
28 this section shall be limited as follows:

29 (1) The tax officials of a city are authorized to receive
30 information only with respect to taxpayers with an address as
31 reflected on the Franchise Tax Board’s records within the
32 jurisdictional boundaries of the city who report income from a
33 trade or business to the Franchise Tax Board.

34 (2) The tax information that may be provided by the Franchise
35 Tax Board to a city is limited to a taxpayer’s name, address, social
36 security or taxpayer identification number, and business activity
37 code.

38 (3) Tax information provided to the taxing authority of a city
39 may not be furnished to, or used by, any person other than an
40 employee or agent of that taxing ~~authority~~. *authority and shall be*

1 utilized in a form and manner to safeguard the tax information as
2 required by the Franchise Tax Board, including, but not limited
3 to:

4 (A) The completion of a data exchange security questionnaire
5 provided by the Franchise Tax Board prior to approval of a data
6 exchange by the Franchise Tax Board.

7 (B) The tax official or agent of a city shall allow for an onsite
8 safeguard review conducted by the Franchise Tax Board.

9 (C) The completion of disclosure training provided by the
10 Franchise Tax Board and a confidentiality statement signed by all
11 employees or agents with access to information provided by the
12 Franchise Tax Board confirming the requirement of data security
13 with respect to that information and acknowledging awareness of
14 penalties for unauthorized access or disclosure under Sections
15 19542 and 19552 and Section 502 of the Penal Code.

16 (D) The tax official or agent of a city shall notify the Franchise
17 Tax Board within 24 hours upon discovery of any incident of
18 unauthorized or suspected unauthorized access or disclosure of
19 the tax information and provide a detailed report of the incident
20 and the parties involved.

21 (E) All records received by the tax officials of a city or its agents
22 shall be destroyed in a manner to make them unusable or
23 unreadable so an individual record may no longer be ascertained
24 in a time frame specified by the Franchise Tax Board.

25 (4) The information provided to the tax officials of the city by
26 the Franchise Tax Board under this section is subject to Section
27 19542, and may not be used for any purpose other than the city's
28 tax enforcement, or as otherwise authorized by state or federal
29 law.

30 (5) Section 19542.1 applies to this section.

31 (c) The Franchise Tax Board may not provide any information
32 pursuant to this section until all of the following have occurred:

33 (1) An agreement has been executed between a city and the
34 Franchise Tax Board, that provides that an amount equal to all
35 first year costs necessary to furnish the city information pursuant
36 to this section shall be received by the Franchise Tax Board before
37 the Franchise Tax Board incurs any costs associated with the
38 activity permitted by this section. For purposes of this section, first
39 year costs include costs associated with, but not limited to, the
40 purchasing of equipment, the development of processes, and labor.

1 (2) An agreement has been executed between a city and the
2 Franchise Tax Board, that provides that the annual costs incurred
3 by the Franchise Tax Board, as a result of the activity permitted
4 by this section, shall be reimbursed by the city to the Franchise
5 Tax Board.

6 (3) Pursuant to the agreement described in paragraph (1), the
7 Franchise Tax Board has received an amount equal to the first year
8 costs.

9 (d) Any information, other than the type of tax information
10 specified in subdivision (b), may be requested by the tax officials
11 of a city from the Franchise Tax Board by affidavit. At the time a
12 tax official makes the request, he or she shall provide the person
13 whose information is the subject of the request, with a copy of the
14 affidavit and, upon request, make the information obtained
15 available to that person.

16 (e) This section does not invalidate any other law. This section
17 does not preclude any city or county from obtaining information
18 about individual taxpayers, including those taxpayers not subject
19 to this section, by any other means permitted by state or federal
20 law.

21 (f) Nothing in this section shall be construed to affect any
22 obligations, rights, or remedies regarding personal information
23 provided under state or federal law.

24 (g) Notwithstanding subdivision (c), the Franchise Tax Board
25 shall waive a city's reimbursement of the Franchise Tax Board's
26 cost if a city enters into a reciprocal agreement as defined in
27 paragraph (2) of subdivision (a). The reciprocal agreement shall
28 specify that each party shall bear its own costs to furnish the data
29 involved in the exchange authorized by this section and Section
30 19551.5, and a city shall be precluded from obtaining
31 reimbursement as specified under Section 5 of the act adding this
32 subdivision.

33 (h) *This section shall remain in effect only until January 1, 2019,*
34 *and as of that date, is repealed.*

35 SEC. 4. Section 19551.5 of the Revenue and Taxation Code
36 is amended to read:

37 19551.5. (a) Notwithstanding any other law, each city that
38 assesses a city business tax or requires a city business license shall,
39 upon the request of the Franchise Tax Board, annually submit to
40 the Franchise Tax Board the information that is collected in the

1 course of administration of the city's business tax program, as
2 described in subdivision (b).

3 (b) Information, collected in the course of administration of the
4 city's business tax program, shall be limited to the following:

5 (1) Name of the business, if the business is a corporation,
6 partnership, or limited liability company, or the owner's name if
7 the business is a sole proprietorship.

8 (2) Business mailing address.

9 (3) Federal employer identification number, if applicable, or
10 the business owner's social security number.

11 (4) Standard Industrial Classification (SIC) Code or North
12 American Industry Classification System (NAICS) Code.

13 (5) Business start date.

14 (6) Business cease date.

15 (7) City number.

16 (8) Ownership type.

17 (c) The reports required under this section shall be filed on
18 magnetic media such as tapes or compact discs, through a secure
19 electronic process, or in other machine-readable form, according
20 to standards prescribed by regulations promulgated by the
21 Franchise Tax Board.

22 (d) Cities that receive a request from the Franchise Tax Board
23 shall begin providing to the Franchise Tax Board the information
24 required by this section as soon as economically feasible, but no
25 later than December 31, 2009. The information shall be furnished
26 annually at a time and in the form that the Franchise Tax Board
27 may prescribe by regulation.

28 (e) The city data provided to the Franchise Tax Board under
29 this section is subject to Section 19542, and may not be used for
30 any purpose other than state tax enforcement or as otherwise
31 authorized by law.

32 (f) If a city enters into a reciprocal agreement with the Franchise
33 Tax Board pursuant to subdivision (a) of Section 19551.1, the city
34 shall also waive reimbursement for costs incurred to provide
35 information required under this section and shall be precluded
36 from obtaining reimbursement as specified under Section 5 of
37 Chapter 345 of the Statutes of 2008. The reciprocal agreement
38 shall specify that each party shall bear its own costs to furnish the
39 data involved in the exchange authorized by Section 19551.1 and
40 this section, and the Franchise Tax Board shall be precluded from

1 obtaining reimbursement as specified under subdivision (c) of
2 Section 19551.1.

3 (g) A city shall not be required to provide information to the
4 Franchise Tax Board pursuant to this section if the Franchise Tax
5 Board fails to provide tax information to the city pursuant to a
6 reciprocal agreement entered into pursuant to subdivision (a) of
7 Section 19551.1 for reasons other than concerns related to
8 confidentiality of tax information provided to the city.

9 (h) *This section shall remain in effect only until January 1, 2019,*
10 *and as of that date, is repealed.*

11 SEC. 5. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.